

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PERCY EDWARD MOORE,

Plaintiff,

v.

ORDER

10-cv-580-bbc

FEDERAL BUREAU OF INVESTIGATION,
BUREAU OF PRISON,
CENTRAL INTELLIGENCE AGENCY,
EXECUTIVE OFFICE OF THE PRESIDENT,
U.S. PAROLE COMMISSION and
EXECUTIVE OFFICE FOR U.S. ATTORNEYS Criminal Division,

Defendants.

In an order dated October 6, 2010, I assessed plaintiff an initial partial payment of the filing fee in the amount of \$11.38 and gave him until October 28, 2010 in which to submit the payment. Now plaintiff has submitted a letter dated October 19, 2010, in which he says he submitted his payment on October 8, 2010, and has not heard from the court about the status of his case. A review of this court's financial records indicate that plaintiff's initial partial payment has not yet been received. Therefore, I will construe plaintiff's letter

as a motion for an extension of time to pay the initial partial filing fee.

In his motion, plaintiff says that he submitted a “BP 199 Request” for disbursement of the initial partial payment to the court. However, the most recent payment from plaintiff was \$2.20 received on October 7, 2010 and applied towards the outstanding debt he owes in case 06-C-697-C. Because it appears that plaintiff has begun the process of having the initial partial fee disbursed to the court or is waiting for the institution finance office to process his request for disbursement, I will allow plaintiff an extension of time until November 23, 2010 in which to pay the \$11.38 initial partial filing fee.

One further matter requires comment. In his letter plaintiff advises that 20% of his income is presently being withheld for previous litigation and states that the fee for filing “the lawsuit in progress should be added onto the balance of the old one so plaintiff is not paying 40% of his wages” towards civil filing fees. Under the Prison Litigation Reform Act, an inmate who files a lawsuit in federal court under the in forma pauperis statute must pay the statutory filing fee, first by making an initial partial payment and then by sending the remainder of the fee to the court in installments of 20% of the preceding month’s income in accordance with 28 U.S.C. § 1915(b)(2). If the prisoner then files additional complaints or appeals, the amount owed increases as well. Newlin v. Helman, 123 F.3d 429, 436 (7th Cir. 1997), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000) (fees for filing more than one lawsuit or

appeal accumulate).

In plaintiff's case, when he filed his complaint in case no. 06-C-697-C and made the initial partial payment, he became obligated to pay 20% of his income to reduce the balance due on the \$350 filing fee. Then when plaintiff filed his two subsequent appeals in case no. 06-C-697-C, he became obligated to pay 60% of his monthly income for the \$350 filing fee and the two \$455 appeal filing fees. Court records reflect that plaintiff has an outstanding balance in case 06-C-697-C of \$851.63. Therefore, if plaintiff chooses to pursue his present case and pays the \$11.38 initial partial filing fee, he will be obligated under the provisions of 28 U.S.C. § 1915(b)(2) to pay 80% of his monthly income towards the remaining filing fee owed for this case and for the filing and appeal fees owed from his 2006 action. Because this court is bound by the provisions of the Prison Litigation Reform Act, I have no discretion to modify the method in which the filing fees are collected.

However, plaintiff has a choice about this case. If by November 23, 2010, this court has not received plaintiff's initial partial filing fee, I will assume he is no longer interested in pursuing this action and I will dismiss this case without prejudice. In that instance, plaintiff will not owe a filing fee. If plaintiff chooses to submit the \$11.38 initial partial fee, his complaint will be taken under advisement for screening and he will be obligated to pay the remainder of the filing fee in accordance with 28 U.S.C. § 1915(b)(2). If plaintiff chooses to pursue this case, he should show a copy of this order to prison officials to insure that they

are aware they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that plaintiff Percy Moore's motion for an extension of time is GRANTED and the deadline within which plaintiff is to pay the \$11.38 initial partial payment of the \$350 fee for filing this case is extended to November 23, 2010. If, by November 23, 2010, plaintiff fails to pay the initial partial payment he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close the file without prejudice to plaintiff's filing his case at a later date.

Entered this 3d day of November, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge